Master and Servant—Truck Driver Servant of Owner, Not of Company Renting Truck.—In Charles *v.* Barrett, 190 N. Y. 137, the supreme Court of New York held that a truck driver, who, while hauling goods for an express company, to which the truck was rented by the owner, lost control and ran over and killed a street laborer, was the servant of the truck owner, not of the express company, where he was hired and his services paid for by the owner, who directed him each day to proceed to the point designated by the express company, which merely told him where to get the goods, the truck being returned to the owner's garage at the end of each engagement, and the express company, having no authority to select or discharge the chauffeur, was not liable for his negligence.

The court said in part: "The rule as to when a hirer can be said to have control of the servant is stated in Shearman & Redfield on Negligence, § 162, as follows:

" 'The hirer cannot properly be said to have control of the servants unless he has the right to discharge them and employ others in their places in case of their misconduct or incompetency, that being the only practicable means by which free servants can be controlled. If therefore the hirer has no such power he is not responsible to any one for the faults of the servants.'

"* * * The case of McNamara *v.* Leipzig, 227 N. Y. 291, 125 N. E. 244, 8 A. L. R. 480, seems to be a controlling authority upon the facts in the case at bar. In that case the court said:

" 'The performance of the agreement had been entered upon and was being carried out at the time of the accident. In the performance the defendant exercised no control in the selection of the chauffeur, or over him, his wages, or the car, other than to direct him when and where to come with the car for the defendant and where to transport him. The car when not in the use of the defendant was kept in the garage of the company, and there cared for and supplied with the necessaries by the company, and there the chauffeur received calls of the defendant for the use of the car and the chauffeur. In the matters of coming to and leaving the defendant and of taking him to the places directed by him the chauffeur was under his directions.'

"The court held that the defendant in that case was not liable, but that the garage company was responsible for the negligence of its chauffeur. The court further said:

" 'The relation of principal and agent obviously did not exist. The liability of the defendant depends on the doctrine of the liability of a master for the acts of his servant done in the course of his employment. The relation of master and servant is created by contract, express or implied. Of the elements which may constitute it, those that the servant must, in the course of the employment, be doing the work of the master under the will, direction and control of the master

throughout all the details of the work, are essential. * * * A servant lent or let by his master to another does not become the servant of the other, because the other directs what work is to be done, or in what way it is to be done. If the servant remains subject to the general orders of the person who hires and pays him, he is still his servant, although specific directions may be given him by the other from time to time as to the work to be done. The other person has the right to exercise the degree of control of the servant essential to secure the fulfilment of the agreement between the master and himself.'

"In Hartell *v.* T. H. Simonson & Son Co., 218 N. Y., 345, at page 349, 113 N. E., 255, 256, the court of appeals said:

"'A servant in the general employment of one person, who is temporarily loaned to another person to do the latter's work, becomes, for the time being, the servant of the borrower, who is liable for his negligence. But if the general employer enters into a contract to do the work of another, as an independent contractor, his servants do not become the servants if the person with whom he thus contracts, and the latter is not liable for their negligence.'

"In conclusion, the court of appeals said, in McNamara *v.* Leipzig, supra:

"'In the present case the written agreement defines the relation and liabilities of the parties. It gave for a consideration to the defendant the use, at demand, of the automobile and a chauffeur to operate and run it for a certain period. The company possessed, managed, cared for and supplied the automobile, and selected, employed and controlled the chauffeur, who operated the car for it. The extent of the defendant's control was to direct the chauffeur when and where to come with the automobile, where to go, and where to stop. In obeying those directions the chauffeur was carrying out the company's work under the agreement. The defendant had no authority, management or care over the automobile, or as to the manner in which it should be treated or driven. The chauffeur did the company's business in his own way and the orders given him by the defendant merely stated to him the work which the company had arranged to do.'

"The above language seems to me to be pertinent to the conceded facts in the case at bar. Here we have the renting of the use of the truck by Steinhauser to the defendant Adams Express Company. For a consideration of $2 an hour the express company was to have the use when it wished of the truck and a chauffeur to drive it. Steinhauser, the owner, owned, managed, cared for and supplied the truck, and selected, employed and controlled the driver who operated it. The only control of the defendant was to direct where the truck was to go and when in the performance of the contract which it had with the owner. In following the defendant's instructions the driver

of the car was merely performing the work of his employer under his arrangement with the defendant. That the driver, Moses, was at the time of the accident, in the employ of Steinhauser and not of the defendant appellant is, I think, sustained by the decisions in Kellogg *v.* Church Charity Foundation of Long Island, 203 N. Y., 191, 96 N. E., 406, 38 L. R. A. (N. S.), 481, Ann. Cas., 1913A, 883, Driscoll *v.* Towle, 181 Mass., 416, 63 N. E., 922, and Weaver *v.* Jackson, 153 App. Div., 661, 138 N. Y. Supp., 609, and many other decisions holding that under the circumstances existing in the case at bar the owner of the car and not the hirer is responsible for the negligence of his servant, the driver.

"The respondent relies upon the decision of this court in Braxton *v.* Mendelson, 190 App. Div., 278, 179 N. Y. Supp., 845. That case is clearly distinguishable from the case at bar. In the Braxton case the defendant, the owner of the truck, had leased it with others under a yearly contract with a dairy company to furnish trucks to work by the day for such company; the company had full charge of the trucks; the truck in question was kept at the hirer's plant and was taken out every morning and returned to the same place every night, and was at all times exclusively in the control and possession of the hirer, save only when repairs were required upon it, when it was temporarily returned to the owner; the driver of the car was assigned to the hirer's organization, and it was necessary for him to become a member of the Milk Drivers' Union in order to drive the car for the hirer; the chauffeur received his orders solely from the hirer, and had no dealings with his original employer, aside from receiving his wages and authority with reference to repairs upon the car; whereas, in the case at bar, the driver of the truck remained under the control at all times of the owner of the car, from whom he received directions each day where, in the performance of the owner's contract with the express company, he was to proceed for work; each day the car was returned to the owner's garage, and each morning the driver obtained his directions directly from the owner as to where his services were required. While, as before stated, in carrying out his master's contract with the express company, he received directions from the express company from time to time during the day, where they desired their goods to be taken, such directions in no manner involved the services of the driver to the express company, but were merely to direct where the express company's goods were to be taken, pursuant to its contract with the owner of the car."

Streets and Highways—One Way Automobile Ordinance.—An ordinance confining the operation of all motor vehicles on one of its streets, for a specified distance, to travel in one direction, because of the narrowness of such street, was held valid by the Court of Appeals of Kentucky in Commonwealth *v.* Nolan, 224 S. W. 506.